1948.

O/EARA&PO/48/48

File No. 26/48

Legal Dept.

G **BRANCH**

Subject:—

Opinions Under the Essential Articles Restricted Acquisition and Possession Order 1943

R.7/6

O/EARA&PO/48

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1.	G/474 21.7.1948	Defence of India Rules, Rule 119 publicity of the order under - whether rule 119 applies only to the orders issued under the defence of India Rules and not to subsidiary Orders on notifications issued in pursuance of an order made under the rules.	1 - 6.

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In R.L.A's opinion No.5069, dated the 28th May 1943, the Remembrancer of Legal Affairs advised that "if it is argued that though the notification was under an order issued in pursuance of the Defence of India Rules, it is only an extending notification which brought an order made under the said Rules in force in Ahmedabad and due publicity as required by Defence of India Rule 119 should have been given then the following points may be advanced". The C.R's office points out that if the Rationing Prosecutor urges the ground that rule 119 of the Defence of India Rules applies only to the orders issued under the Defence of India Rules and not to subsidiary orders or notifications made or issued in pursuance of an order made under the Defence of India Rules and if the Court accepts this view, the defence may require us to prove that the mode of publicity was duly prescribed when the R.A. R.A./Order, 1943, was issued for the first time. The C.R's office thinks that if the Court orders the prosecution to produce the original orders of the issuing authority, for verifying the method

of publication, which the authority deemed adequate ~~xxxxxx~~ for the publicity of the E.A.R.A./ Order, 1943, ~~xx~~ the prosecution would not be in a position to produce the original file as it is not traceable. In that case the prosecution may fail to get a conviction. The R.L.A. is therefore requested to advise whether the argument should be advanced at all and whether the argument at 'X' only (pp.8-9) should be advanced.

2. The course suggested in R.L.A's opinion No.5069 dated 28-6-1948 may be followed in its entirety. Even if the argument at 'A' above is advanced and accepted and the orders at 'B' are not traceable, the Crown can prove that the accused had information of the principal order by showing that the order was p published in the Gazette and was further given publicity ~~by~~ by means of a Press Note in the various newspapers which newspapers can be produced in a

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Court as an evidence. Even in spite of this the Court is inclined to acquit the accused xxx there is no help for it.

3. The view at "Z" on p.17 that "if the above argument for publicity is accepted by the Court, it may seriously affect hundreds of pending cases under the Bombay Rationing Order,1953" is untenable. In the first plac as pointed in R.L.A's opinion No 5059, dated 28-5-1948 the validi ty of an order is not affected by any defect in its publicati- on and that it would be open to the Crown to prove that the accu sed had information of the Order Secondly the E.R.O., 1943, is the basis on which the whole system of rationing stood or is continued. Every body in the area in which rationing had been introduced or is continued knows about the E.R.O., 1943, since he is given ration cards or permits or similar other documents under the said Order, acquires rationed articles in accordance with its provisions and gets the cards or permits or other documents renewed then under. It is not therefore xxxx difficult to fix the knowledge

upon the accused of the B.R.O., 1943.

4. The proposal in para 2 of C.R.Office note at p.18 is that it is desirable to apply the Essential Articles Restricted Acquisition and Possession Order, 1943, again to Ahmedabad by cancelling the existing notifications in case the Court may not accept the grounds suggested by the R.L.A. The proposal need not be considered for the reasons given in the next Paragraph.

5. Section 17(2) of the essential supplies ((Temporary Powers) Act, 1946, provides that any order deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an Order made under this Act. The Essential Articles Restricted Acquisition and Possession Order, 1943, was issued under rule 81(2) of the defence of India Rules. The Defence of India Act and the Rules made thereunder expired on the 30th September 1947. All orders however, issued thereunder which were covered by sec.3 of

the Essential Supplies (Temporary Powers) Ordinance, 1946 (Ord.XVI of 1946) were first continued in force under section 5 of the said Ordinance and then under section 17 of the Essential Supplies (Temporary Powers) Act, 1946. Section 5 of the said Ordinance provides that until other provisions are made under this Ordinance, any order, whether notified or not, made by whatever authority under sub-rule (2) of rule 81 of the Defence of India Rules, in respect of any matter specified in section 3, which was in force immediately before the commencement of the Ordinance, shall notwithstanding the expiration of the said rules, continue in force so far as consistant with this Ordinance and be deemed to be an order made under section 3. Even if it be held by a Court that the E.A.P.& P. Order, 1943, was not duly published, that decision would not warrant the acquittal of an accused prosecuted for contravening the provisions of that Order after the 1st October 1946, for the defence of want of proper publication of the order would not be available to him. The question

of reissuing the notifications as proposed by the C.R's office will not arise.

P.M.L./21.7

Remembrancer of Legal Affairs.

U.R. to C. of R., No. G./474, dated the 21st July 1918.

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